

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: April 20, 2006

TO: Director, Division of the Commission Clerk & Administrative Services (Bayó)

FROM: Division of Competitive Markets & Enforcement (M. Watts, Howell, Ollila)
Office of the General Counsel (Tan, Fordham)

RE: Docket No. 050955-TX – Compliance investigation of Cypress Communications Operating Company, LLC for apparent violation of Section 364.183(1), F.S., Access to Company Records.

AGENDA: 05/02/06 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\CMP\WP\050955.RCM.DOC

Case Background

On December 27, 2005, staff opened Docket No. 050955-TX against Cypress Communications Operating Company, LLC (Cypress) for its apparent violation of Section 364.183(1), F.S., Access to Company Records. On June 3 and July 19, 2005, staff sent certified letters via the United States Postal Service (U.S.P.S.) to Cypress requesting data contained in its company records for inclusion in the Florida Public Service Commission's (Commission's) annual report to the Legislature on the status of local competition in Florida (local competition report). Cypress signed the return receipt card for each certified letter, but staff did not receive the company's response.

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Staff's recommendation in Docket No. 050955-TX was presented to the Commission at the February 28, 2006, Agenda Conference. On March 20, 2006, Proposed Agency Action (PAA) Order No. PSC-06-0229-PAA-TX was issued by the Commission imposing a \$10,000 penalty on Cypress for its apparent violation of Section 364.183(1), Florida Statutes. On April 17, 2006, Cypress submitted a settlement proposal. This recommendation addresses Cypress's proposed settlement.

The Commission is vested with jurisdiction over this matter pursuant to Sections 364.183, 364.285 and 364.386, Florida Statutes. Accordingly, staff believes the following recommendations are appropriate.

Discussion of Issues

Issue 1: Should the Commission accept Cypress Communications Operating Company, LLC's settlement offer to voluntarily contribute \$3,500 to the Commission for deposit in the General Revenue Fund within 30 days of the issuance of the Consummating Order to resolve its apparent violation of Section 364.183(1), Florida Statutes?

Recommendation: Yes. The Commission should accept the company's settlement proposal. **(M. Watts/Howell/Ollila/Fordham/Tan)**

Staff Analysis: On April 17, 2006, Mr. Randy New, counsel for Cypress, submitted an offer to settle the issue in this docket. In the letter, Mr. New stated that Cypress did timely respond to the data request via regular U. S. mail, but did not have proof that it had done so. Thus, Cypress proposed the following:

- A monetary offer of \$3,500; and
- To institute processes within the company to avoid a situation of this nature arising in the future.

Staff believes the terms of the settlement agreement as summarized in this recommendation are fair and reasonable. Additionally, the amount of the settlement offer is consistent with the Commission's action in accepting similar terms of settlement for the same violation in Docket No. 000217-TX, In Re: Initiation of show cause proceedings against ATI Telecom, Inc. for apparent violation of Section 364.183(1), F.S., Access to Company Records. Therefore, staff recommends that the Commission accept Cypress Communications Operating Company, LLC's settlement offer to voluntarily contribute \$3,500 to the Commission for deposit in the General Revenue Fund within 30 days of the issuance of the Consummating Order to resolve its apparent violation of Section 364.183(1), Florida Statutes.

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Issue 2: Should this docket be closed?

Recommendation: If no person, whose substantial interests are affected by the proposed actions files a protest of the Commission's decision on Issue 1 within the 21 day protest period, the Commission's Order will become final upon issuance of a Consummating Order. If the Commission's Order is not protested and Cypress complies with its settlement offer, this docket should be closed administratively. If Cypress fails to remit the voluntary contribution of \$3,500 to the Commission within 30 days of the issuance of the Consummating Order, Certificate No. 8176 should be canceled and this docket should be closed administratively. **(Fordham/Tan)**

Staff Analysis: Staff recommends that the Commission take actions as set forth in the above staff recommendation.